

**REMARKS**Status of the Application

Claims 1-33 are now pending, a total of 33 claims. Claims 34-38 are cancelled herewith. Claims 1 and 18 are in independent form. The amendments to the claims are supported by the application as filed. Accordingly, entry of the amendments is respectfully requested. Applicants request any extensions necessitated by the filing of this response and authorize any necessary fees not accompanied herewith to be withdrawn from Deposit Account No. 50-3938, with Order No. 03-1083.

The claims are amended to meet certain points in the Office Action that appear to lack any statutory grounding, and to recite particular embodiments that Applicants, in their business judgment, have determined to be commercially desirable. The claim amendments have not been submitted for any reason relating to patentability, or to overcome any rejection. Applicants reserve the right to pursue the subject matter of the previously presented, and of the previously or currently cancelled claims in one or more continuing applications.

Claim Objections

The Office Action objects to claims 34-38 as referencing a system rather than an apparatus. Applicants have cancelled claims 34-38 and believes these objections are now moot. Applicants therefore request withdrawal of these objections.

35 U.S.C. §103*Claims 1-13, 15-29, and 31-38*

The Office Action rejects claims 1-13, 15-29, and 31-38 as allegedly being obvious under 35 U.S.C. § 103 over cited sections of U.S. Patent Publication No. 2004/0254804 to Peterffy (hereinafter, “Peterffy”) in view of cited sections of U.S. Patent No. 7,225,151 to Konia (hereinafter “Konia”). Applicants traverse these rejections and request reconsideration of these claims.

First, the combination of Konia and Peterffy is improper because Konia and Peterffy are non-analogous art and because the Office Action lacks a showing a substantial evidence that the combination of Konia and Peterffy would have been obvious to a person of ordinary skill in the art.

Peterffy discusses a trading system for exchanges of financial instruments (Abstract) similar to the type of trading that occurs on a stock exchange. Such stock exchanges typically facilitate matching of bids and offers for financial instruments, allow multiple bids and offers at a single price point, allow bids and offers to be cancelled after placement, allow price levels to move up and down as information about a financial instrument changes, and are not confined to a limited time frame for trades. Konia on the other hand discusses a system with a completely different structure and function, namely a web-based auction system (Abstract, Column 1) such as EBay. Such systems typically facilitate one-sided auctions in which only an offer price is submitted (not a bid and offer like in a stock exchanges), for goods and services (not financial instruments like in a stock exchange), allow only one bid at a single price point (not multiple bids like in a stock exchange), do not allow a bid to be canceled, only allow an upward direction of price movement (not a dynamic movement that reflects constantly changing information like in a stock exchange), and operate in a limited auction time period (not a continuous fashion like a stock exchange). Accordingly, the function and structure of the systems discussed in Konia and Peterffy are drastically different and non-analogous and therefore the combination is proper.

Moreover, the Office Action lacks a showing of substantial evidence to support the combination, but merely makes a statement asserting that the combination would have been obvious. A mere statement of obviousness is a conclusion rather than evidence. No evidence cannot be considered substantial evidence. Accordingly, the combination is improper for lacking a showing of substantial evidence in support of the combination.

Second, even if the combination were proper, applicants claims distinguish over the combination. In particular, Applicants claim 1, recites, in part:

receiving a dynamic price improvement order, in which the dynamic price improvement order is associated with a trade for a financial instrument traded on the electronic trading system, in which the **dynamic price improvement order indicates that the electronic trading system should maintain a priority of the dynamic price improvement order ...in which the priority includes a priority used by the electronic trading system for determining matches with contra orders.**

In contrast, Peterffy discloses a trading system that allows participants to submit improvements to bids and offers on their own. (Abstract) Peterffy does not discuss a dynamic price improvement order that **indicates that the electronic trading system should maintain a priority of the dynamic price improvement order ...in which the priority includes a priority used by the electronic trading system for determining matches with contra orders.** Instead, traders are given the opportunity to alter prices of their own previously submitted orders.

Also in contrast to claim 1, Konia discloses an auction system without any priority for matching with contra orders. Konia does not discuss the missing element from Peterffy of a dynamic price improvement order that **indicates that the electronic trading system should maintain a priority of the dynamic price improvement order ...in which the priority includes a priority used by the electronic trading system for determining matches with contra orders.** In fact, Konia does not disclose contra orders at all and therefore could not teach or suggest this limitation.

Applicants therefore respectfully request the withdrawal of the rejection of independent claim 1. Independent claim 18 includes similar limitations as claim 1 and is allowable for at least similar reasons. Each of claims 2-13, 15-17, 19-29, and 31-33 depend from at least one of claim 1 and 18 and is allowable based at least on that dependence. Accordingly withdrawal of the rejection of these claims is respectfully requested. Claims 34-38 have been canceled, and the rejections are moot, so withdrawal of the redetection is also requested.

*Claims 14 and 30*

The Office Action rejects claims 14 and 30 as allegedly being obvious under 35 U.S.C. § 103 over Peterffy in view of Konia and in further view of cited sections of U.S. Patent No. 7,209,896 to Serkin (hereinafter “Serkin”). Applicants traverse these rejections and request reconsideration of these claims.

As discussed above, Peterffy and Konia do not teach the missing element of a dynamic price improvement order that **indicates that the electronic trading system should maintain a priority of the dynamic price improvement order ...in which the priority includes a priority used by the electronic trading system for determining matches with contra orders** in claim 1. Serkin does not teach or suggest such a limitation and the office action does not allege that it does.

Accordingly, claim 1 patentably distinguishes over the combination of Peterffy, Konia and Serkin. Claim 18 contains a similar limitation and distinguishes over this combination for similar reasons. Since each of claims 14 and 30 depend from at least one of claims 1 and 18, claims 14 and 30 also distinguish over this combination. Applicants therefore request withdrawal of this rejection.

Conclusion

Pursuant to 37 C.F.R. § 1.136(a), a petition for a two-month extension of time to respond to this Office Action is hereby made to make this response timely and otherwise not present. With the extension, the time for replying to the Office Action is extended up to and including August 4, 2008. The Commissioner is hereby authorized to debit Deposit Account No. 50-3938 in the amount of \$460.00 for fees associated with this response and to charge any additional fees or credit any surplus due for any reason, to Deposit Account No. 50-3938, Order No. 03-1083.

Applicants request that the application be passed to issue in due course. The Examiner is urged to telephone Applicants' undersigned representative at the number noted below if it will advance the prosecution of this application, or with any suggestion to resolve any condition that would impede allowance. In the event that any extension of time is required, Applicants petition for any extension of time required to make this response timely and otherwise not present. Kindly charge any additional fee, or credit any surplus due for any reason, to Deposit Account No. 50-3938, Order No. 03-1083.

Respectfully submitted,

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